

FEB 14 1979

MICHAEL RODAK, JR., CLERK

---

IN THE  
**SUPREME COURT OF THE UNITED STATES**

---

OCTOBER TERM, 1978

---

No. .... **78-1199**

---

FOREST LAWN MEMORIAL GARDENS, INC.,  
and MT. OLIVET CEMETERY CO.,  
Petitioners,

v.

MR. and MRS. GEORGE E. AYRES, MR. and MRS. RAYMOND C. BROWN,  
MR. and MRS. WILLIE G. HITT, JR., MR. and MRS. JOSEPH E. JOHN-  
SON, MR. and MRS. ALVIS C. LESLIE, MR. and MRS. JAMES A. RUS-  
SEL, and CHARLES D. ALLISON and wife, IRENE ALLISON,  
Respondents.

---

**BRIEF**

**In Opposition to Writ of Certiorari  
To the Court of Appeals of Tennessee, Middle Section**

---

K. HARLAN DODSON  
P. O. Box 2524  
Nashville, Tennessee 37215  
Attorney for Respondents

DODSON, HARRIS, ROBINSON & ADEN  
Of Counsel



IN THE  
**SUPREME COURT OF THE UNITED STATES**

---

OCTOBER TERM, 1978

---

No. ....

---

FOREST LAWN MEMORIAL GARDENS, INC.,  
and MT. OLIVET CEMETERY CO.,  
Petitioners,

v.

MR. and MRS. GEORGE E. AYRES, MR. and MRS. RAYMOND C. BROWN,  
MR. and MRS. WILLIE G. HITT, JR., MR. and MRS. JOSEPH E. JOHN-  
SON, MR. and MRS. ALVIS C. LESLIE, MR. and MRS. JAMES A. RUS-  
SEL, and CHARLES D. ALLISON and wife, IRENE ALLISON,  
Respondents.

---

**BRIEF**

**In Opposition to Writ of Certiorari  
To the Court of Appeals of Tennessee, Middle Section**

---

Petitioners assert two questions which they insist afford jurisdiction in this Court to review the action of the Court of Appeals of Tennessee for the denial of due process. Both of these questions are premised upon the assumption that the Tennessee Courts in sustaining these class actions caused members of the class who failed to opt out of the lawsuit to forfeit "valuable contract rights which were legally enforceable." Obviously, the determination of the validity of such contract presents a state question and one which is not reviewable by the federal courts.

"[I]t cannot be said that a state court denies due process when on appropriate hearing it determines that there is evidence to sustain a finding of the violation of state law with respect to the conduct of local affairs."

*Bell Tel. Co. versus Pennsylvania Pub. Utilities Com.*, 309 U.S. 30, 32, 84 L.Ed. 563, 564-565, 60 S.Ct. 411.

In the case now before this Court, the Trial Judge held on November 14, 1975, that the contracts in question "be and the same are hereby declared invalid and unlawful as violative of the laws of the State of Tennessee" and further held that the members of the class "who have not exercised their option to remove themselves therefrom be and they are hereby entitled to a refund of all monies contracted to be paid under such contract." (A-5)

This determination by the Trial Court was duly affirmed by the Supreme Court of Tennessee on May 17, 1976, in the following language:

"We agree with the Trial Court and the position of the appellees that the question of the validity of the contract under consideration herein is controlled by the decision of this Court in the *Garrett* case, *supra*. As insurance contracts employed for the purpose of controlling the funeral business, such contracts are illegal. 505 S.W.2d at 710. We affirm our holding in *Garrett* and, therefore, hold that the Trial Court correctly rescinded the contracts issued by appellants to the members of the class represented herein and correctly ordered the refund of all monies paid under such contracts."

(A-9)

Clearly, this is a State question and, the highest court of the State having spoken, its opinion is the final word on the

subject, in each of the questions the petitioners ask this Court to review. Petitioners, in honesty with the Court, found both questions upon the assumption that the members of the class were deprived of due process because they forfeited "valuable contract rights which were legally enforceable" (p-5) and again they forfeited "more valuable contract rights" (p-6). Since the highest court of the State has found "no contract rights" exist by holding "that such contracts are illegal", and "correctly rescinded" the entire basis for petitioners' insistence that there has been a taking of property without due process of law fails; no federal question is presented; and the Petition for Certiorari should be denied.

It is true that petitioners by their argument raise some additional peripheral issues which are not squarely within the question they seek to have answered by this Court. These questions likewise deal with state law without federal constitutional implications.

On page 10 of their petition, petitioners seem to argue that the Trial Court erred in refusing to hold on petition to rehear that portions of the contract were legal and portions were illegal and that the legal portions could be severed from the illegal. This question is interesting only in view of the proper concession that petitioners themselves made in footnote 4 on page 4 of their petition wherein they conceded "the State court rejected such claim and no federal constitutional infirmity was asserted as to such rejection."

On page 11 of their petition, the petitioners allege that the original complaint had averred only a rule 23.02(1) and (2) class action and not a (3) class action and therefore 23.02(3) relief was not warranted. While the complaint is not copied in the petitioners' Appendix for this Court to examine and see what relief was prayed, it is sufficient to respond by saying the State Supreme Court in reviewing the complaint obviously concluded as a matter of state law that the complaint met the test

of rule 23.02(3) as adopted by the Court. In holding that the Trial Court "correctly ordered the refund of all monies paid under such contracts" (A-9) it granted 23.02(3) relief.

Finally, the petitioners attack the language contained in the notice given to the members of the class. Again, it is unfortunate that the notice is not contained in petitioners' Appendix. Actually, the notice in the Forest Lawn case would not be before the Court even if the entire record in the appellate court of Tennessee was certified to this Court. The complaint against the notice in petitioners' brief is "Yet the class action notice gave no indication to the people that they had such valuable enforcement rights even if the contracts were totally legal. . . ." (Petition p. 15) Obviously, if the courts of Tennessee had held that the contracts were totally legal, the respondents' suits would have been dismissed and the "valuable enforcement rights" would have remained invalid.

For all the foregoing reasons, we respectfully submit that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

K. HARLAN DODSON  
900 Nashville City Bank Building  
P. O. Box 2524  
Nashville, Tennessee 37219  
(615-244-6840)

Of Counsel

DODSON, HARRIS, ROBINSON & ADEN